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No. 7721

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IN THE  
United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT.

JAMES S. McKNIGHT,

*Appellant.*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

Petition for Rehearing

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PEIRSON M. HALL,  
*United States Attorney,*

CHARLES H. CARR,  
*Assistant United States Attorney,*

Federal Building,  
Los Angeles, California,

*Attorneys for Appellee.*

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## SUBJECT INDEX

	PAGE
Foreword .....	1
The Rule of Strict Construction Does Not Require That the Narrowest Technical Meaning Be Given to the Words Employed in a Criminal Statute.....	3
Printed Matter Calculated and Obviously Intended to Re- flect Injuriously on the Character or Conduct of a Person Inhibited By the Statute .....	3
Dunning Letters Which By Their Style of Display Reflect Injuriously Have Been Held to Be Inhibited By the Statute .....	4
It is a Question for the Jury Whether Delineation of Print- ing is Calculated to Affect Injuriously.....	5
United States May Prohibit the Carriage By Mail of Such Things as It Pleases .....	5
Conclusion .....	5
Certificate of Counsel .....	5

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## CITATIONS AND AUTHORITIES

American, etc. v. Kiely, (C.C.A. 2), 41 Fed. (2d) 451.....	5
Botsford v. United States, (C.C.A. 6), 215 Fed. 510.....	5
Griffin v. United States, (C.C.A. 1), 248 Fed. 6.....	4
Pickett v. United States, 216 U. S. 456.....	3
United States v. Brown (C. C. Vt.), 43 Fed. 135.....	4
18 United States Code, 335.....	1
United States v. Corbett, 215 U. S. 233.....	3
United States v. Davis, 38 Fed. 327.....	5
United States v. Dodge (D. C. Pa.), 70 Fed. 235.....	4, 5
United States v. Olney (D. C. Tenn.), 38 Fed. 328.....	5
United States v. Simmons (D. C. Conn.), 61 Fed. 640.....	4
Warren v. United States, (C.C.A. 8), 183 Fed. 718.....	3



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COMES NOW the United States of America, appellee in the above entitled cause, and presents this its Petition for Rehearing of the above entitled cause and, in support thereof, respectfully shows:

I.

That the opinion of this Honorable Court reversing the judgment of conviction in the above entitled case too narrowly construed and interpreted the statute, namely, 18 U. S. C. 335; that the legislative intent, as well as the verbiage of the statute, inhibits the mailing of postal cards with printing or delineations which are calculated by the terms, or manner, or style of display, and obviously intended to reflect injuriously upon the character or conduct of another; that this inhibition is applicable irre-

spective of whether or not the language or delineation is libelous or defamatory per se; that the opinion of this Honorable Court is based on a construction of the statute which makes it necessary that the writing or delineation be libelous; that the principle enunciated by this Honorable Court in its opinion, namely, that the publication of truthful information regarding candidates for public office is for the interest of the public and therefore privileged, is entirely out of harmony with and not a reasonable interpretation of the statute; that the construction of the statute by this Honorable Court is at variance with at least one other circuit court; that the interpretation of the statute by this Honorable Court has placed it in the category of a statute relating to the law of libel; that the legislative intent, as well as the language of the statute, relates to the prevention of the use of the mails for the dissemination of matter which is lewd, libelous, defamatory, threatening or calculated by the terms, or manner, or style of display and obviously intended to reflect injuriously upon the character or conduct of another; that the efficacy of the statute has been destroyed in that offenses enumerated by the legislature have been eliminated to such an extent that for all practical purposes prosecutions henceforward must be based upon either one of two propositions: First, that the language or delineation is lewd; or second, that the same is libelous, and in the event of matter of a libelous nature, truth apparently would defeat the prosecution in that case.

II.

The Rule of Strict Construction Does Not Require  
That the Narrowest Technical Meaning Be Given  
to the Words Employed in a Criminal Statute.

*United States v. Corbett*, 215 U. S. 233, 242:

“The rule of strict construction does not require that the narrowest technical meaning be given to the words employed in a criminal statute in disregard of their context and frustration of the obvious legislative intent \* \* \*.”

*Pickett v. United States*, 216 U. S. 456, 461:

“The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage.”

(A) Printed Matter Calculated and Obviously Intended to Reflect Injuriously on the Character or Conduct of a Person Inhibited by the Statute.

*Warren v. United States* (C.C.A. 8) 183 Fed. 718, 721, 722:

“It has been frequently held that the statute covers mail matter from creditors and collection agencies addressed to debtors and bearing externally visible charges or imputations of habitual refusal to pay just debts, threats of suit, etc., *not alone because of a threatening character, but because calculated and obviously intended to reflect injuriously upon the character and conduct of others.* (Citing cases.) Aside from the question whether the language employed by the accused is scurrilous, defamatory or threatening, it was *clearly calculated and obviously*

*intended to reflect injuriously on the character and conduct of the person named.* (Emphasis ours.)

“It needs no discussion to show that such a charge is calculated to reflect injuriously upon one’s character and conduct. *And as a prosecution under the statute does not proceed as one for libel, it is immaterial whether the objectionable language be true or false, or whether the accused was actuated by public spirit or private malice.*” (Emphasis ours.)

*Griffin v. United States* (C.C.A. 1) 248 Fed. 6, 9:

“We have carefully examined the communications upon the postal cards and the pictures in connection therewith and contained thereon *and are of the opinion that they were calculated by the terms and manner of display and obviously intended to reflect injuriously upon the character and conduct of the person to whom they were addressed, and that some of them also contained language of a scurrilous and defamatory character within the meaning of the provisions of the act in question.*” (Emphasis ours.)

**Dunning Letters Which By Their Style of Display Reflect Injuriously Have Been Held to Be Inhibited By the Statute.**

*United States v. Brown*, (C. C. Vt.) 43 Fed. 135;  
*United States v. Dodge* (D. C. Pa.) 70 Fed. 235;  
*United States v. Simmons* (D. C. Conn.) 61 Fed. 640.



(B) It is a Question for the Jury Whether Delineation  
or Printing is Calculated to Affect Injuriously.

*United States v. Dodge* (D. C. Pa.) 70 Fed. 235;

*United States v. Olney* (D. C. Tenn.) 38 Fed. 328;

*United States v. Davis*, 38 Fed. 327;

*Botsford v. United States*, (C.C.A. 6) 215 Fed. 510.

(C) United States May Prohibit the Carriage by Mail  
of Such Things as It Pleases.

*American Civil Liberties Union v. Kieley* (C.C.A. 2),  
40 Fed. (2d) 451.

### Conclusion

Wherefore, upon the foregoing grounds, it is respectfully urged that this Petition for Rehearing be granted and that the judgment of conviction of the District Court be, upon further consideration, affirmed.

Respectfully submitted,

PEIRSON M. HALL,

*United States Attorney,*

CHARLES H. CARR,

*Assistant U. S. Attorney,*

*Attorneys for Appellee.*

### Certificate of Counsel

I, counsel for the above named United States of America, do hereby certify that the foregoing Petition for Rehearing of this cause, in my opinion, is well founded and that it is not interposed for delay.

PEIRSON M. HALL,

*United States Attorney.*

